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No. 86-1383

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

NEW YORK LAND COMPANY, JOSEPH BERNSTEIN, RALPH BERNSTEIN, CANADIAN LAND COMPANY OF AMERICA, N.V., HERALD CENTER LTD., and NYLAND (CF8) LTD.,

Petitioners,

—v.—

THE REPUBLIC OF THE PHILIPPINES and GLOCKHURST CORP., N.V.,

Respondents.

BRIEF OF RESPONDENT GLOCKHURST CORP., N.V. IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

Respondent Glockhurst Corp., N.V. was a defendant-appellant below, together with petitioners. Glockhurst supports the grant of a Writ of Certiorari as requested by petitioners. This Brief seeks to elaborate on the reasons for granting a Writ of Certiorari with respect to the issues concerning Act of State and justiciability, which petitioners have raised. In connection therewith, there follows a more detailed statement of the questions presented as they relate to these issues:

1. Whether there is a "private act" exception to the Act of State doctrine which permits the courts of this country to entertain an action that requires examination of the validity of acts of the head of a foreign state performed in his country in the exercise of the powers of his office.

2. Whether the Act of State doctrine is inapplicable to an action based on acts of state committed by the head of a foreign state merely because his government has since been replaced and the action is brought by the successor government.

3. Whether an action in which a foreign sovereign challenges as unlawful the conduct of the sovereign's former president, whom the present government ousted from power, is justiciable by the Federal courts.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

OTHER AUTHORITIES

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Respondent Glockhurst Corp., N.V. ("Glockhurst") respectfully submits this Brief in support of the Petition for Certiorari filed by petitioners New York Land Company, Joseph Bernstein, Ralph Bernstein, Canadian Land Company of America, N.V., Herald Center Ltd., and Nyland (CF8) Ltd.

Glockhurst Corp., N.V.[1] supports issuance of a Writ of Certiorari to review the issues set forth in petitioners' Petition for Certiorari and subscribes to the arguments advanced by

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1 The outstanding stock of Glockhurst Corp., N.V. is owned by Bedner Development Corp., Dicet Finance and Investment Corp. and Comapral Investment, S.A., which are all Panamanian corporations.

petitioners. Glockhurst submits this Brief to elaborate on the reasons for granting the Writ with specific reference to the issues concerning applicability of the Act of State doctrine and the justiciability in Federal court of an action in which a foreign sovereign challenges the conduct of the sovereign's former president for acts taken during his tenure.

STATEMENT OF THE CASE

Respondent Glockhurst was a defendant-appellant below, together with petitioners. Petitioners include three of the four companies in this action that own commercial property in Manhattan that is subject to the preliminary injunction issued by the District Court and affirmed by the Court of Appeals. Respondent Glockhurst, a Netherlands Antilles corporation, owns the fourth commercial property. Glockhurst's property consists of the leasehold and building located at 200 Madison Avenue, New York, New York.

This action was commenced in New York Supreme Court by the current Government of the Philippines to recover from their present owners four commercial properties in New York, including the 200 Madison Avenue property owned by Respondent Glockhurst, and a residential property on Long Island. The Philippines contends that those properties should be subject to a constructive trust for its benefit because they are held for former Philippine President, Ferdinand E. Marcos ("Marcos") and were acquired with funds which he had "purloined" by illegal use of the powers of the presidency.

The Complaint

After identifying the parties, the complaint describes Marcos as the dictator of the Philippines who "personally controlled its government and economy" following his declaration of martial law in 1972. (¶ 3) The complaint alleges that throughout his twenty-year reign Marcos "participated in widespread purloin-

ing of funds and properties which were and are the property of the Filippino government and people." (¶ 4) It specifies (¶ 4) the following means by which such "purloining" was allegedly accomplished:

(1) "accepting payments, bribes, kickbacks, interests in business ventures, and other things of value in exchange for the grant of government favors, contracts, licenses, franchises, loans and other public benefits;"

(2) "outright expropriation of private property for the benefit of persons beholden to or fronting for the defendant Marcos . . . ;"

(3) "arrangement of loans by the Philippine Government to private parties beholden to and fronting for the defendant Marcos;"

(4) "direct raiding of the public treasury;"

(5) "diversion of loans, credits, and advances from other governments intended for use by the Philippine Government;" and

(6) "creating public monopolies placed in the hands of persons beholden to and fronting for the defendant Marcos."

It is alleged that an essential part of Marcos' plan was that the assets derived from his looting would "be placed in foreign countries, including the United States, where he would make investments in the names of nominees who would hold such investments for him." (¶ 5) Other individual defendants are alleged to have conspired with Marcos in his "foreign investment activities." (¶ 6)

It is alleged on information and belief that pursuant to the conspiracy five valuable pieces of New York real property were purchased for the benefit of Marcos "from the proceeds of monies and assets purloined from the Philippine Government," (¶ 7) and that this was done with the intent of concealing the

Marcos ownership and "hindering, delaying or defrauding" the Philippine government in asserting its ownership of the properties. (¶ 15) One of these properties is the building known as 200 Madison Avenue, which is owned by Respondent Glockhurst.

The complaint alleges that on or about February 26, 1986 —the day after Marcos fled his country—the Philippine government created the Presidential Commission for Good Government, which was charged with the responsibility of retrieving the property allegedly purchased with the assets stolen by Marcos and placed in the names of individuals or corporations for his benefit.[2] (¶ 13)

Alleging that there is no adequate remedy at law (¶ 17), the complaint prays for relief, *inter alia*, preliminarily and permanently enjoining transfer or encumbrance of the properties described in the complaint or any action adversely affecting the rights of the Philippines in such properties.

Proceedings Below

Simultaneously with the commencement of the action, the State Court issued a temporary restraining order enjoining Glockhurst and the owners of the other properties from transferring or encumbering any of the properties. The action was removed to the District Court, which continued that order and later granted a preliminary injunction to the same effect, which was affirmed by the Second Circuit.

Glockhurst had moved to dismiss the complaint, and in granting and affirming the injunction the Courts below denied that motion *sub silentio*.

In briefs and oral argument below, Glockhurst contended, *inter alia*, that the complaint should be dismissed on its face under the Act of State doctrine and because the action is not justiciable.

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2 After the complaint was filed, President Aquino signed Executive Order Number 2, which authorized the Commission for Good Government to appeal to foreign countries to freeze the assets of the Marcoses and their associates.

The Opinion Of The Court Of Appeals[3]

Discussing the Act of State doctrine,[4] the Court below recognized that a number of authorities cited by Glockhurst and petitioners in that Court hold that the doctrine prohibits review of the validity of acts of officials and former officials of governments purporting to exercise the authority of their offices in the performance of acts within their own territory. (Pet. App. at 29a-32a) However, it held that it is necessary to distinguish between public acts and those performed by the sovereign in a purely private capacity. Accordingly, it recognized that, under its decision, in order to determine whether the Act of State doctrine applies, "the district court will necessarily scrutinize the acts that The Republic challenges." (Pet. App. at 34a)

Although the acts attributed to Marcos could have been performed only by a sovereign using sovereign powers (*e.g.* accepting bribes for government favors, expropriation of private property, creating public monopolies), the Court con-

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3 Citations to the Court of Appeals opinion and to the other decisions below are to the Appendices in petitioners' Petition for Certiorari, and are cited as "Pet. App. at ___."

4 Although no party questioned federal jurisdiction, the Court recognized the duty to consider on its own whether the removal had been proper. It concluded that examination of the complaint showed that the Philippines' claims "necessarily required determinations that will directly and significantly affect American foreign relations," relying on dictum in *Sabbatino* and the article by the late Judge Henry Friendly, *In Praise of Erie—And Of The New Federal Common Law*, 39 N.Y.U. L. Rev. 383 (1964), which had also been cited by the District Court. It found further support for federal jurisdiction in Judge Friendly's opinion in *Republic of Iraq* v. *First National City Bank*, 353 F.2d 47 (2d Cir. 1965), *cert. denied*, 382 U.S. 1027 (1966), and in cases which it read as pointing to the conclusion that the word "laws" in 28 U.S.C. § 1331 includes laws created by federal judicial decisions. The Court concluded that federal jurisdiction is present because the question whether to honor the request of a foreign government that American courts freeze property in the United States "is itself a federal question to be decided with uniformity as a matter of federal law . . . ." (Pet. App. at 17a-23a)

cluded that Glockhurst and petitioners must establish that the alleged wrongdoing did not consist of "purely private acts." (Pet. App. at 32a) The Court provided no standard for distinguishing between illegal acts which were in fact official and those which were only purportedly official but not so in fact, and it expressly recognized that such a distinction "may be difficult to determine." (Pet. App. at 32a)

On the ground that the burden of proof is on the party invoking the Act of State defense, the Court stated that Glockhurst and petitioners "must ultimately demonstrate that the challenged acts of Marcos were in fact *public* acts," (Pet. App. at 32a-33a) (emphasis added), through evidence, for example, that establishes "that Marcos's wealth was obtained through official expropriation decrees or public monopolies." (Pet. App. at 34a) The Court thus placed upon Glockhurst and petitioners the burden of proving exactly what is alleged in the Republic of the Philippines' complaint. It thereby mistakenly ignored the rule that on a motion to dismiss, the allegations of the complaint—that the looting with which Marcos is charged was accomplished in the exercise of his presidential powers—are assumed to be true.

The Court below also rejected Glockhurst's contention that the action is not justiciable by the Federal courts because they lack the "judicially discoverable and manageable standards" (*Baker v. Carr*, 369 U.S. 186, 217 (1962)) for determining the validity of former President Marcos' acts as president. The Court of Appeals found "nothing more unmanageable about this case than about any other case involving theft, misappropriation, corporate veils, and constructive trusts." (Pet. App. at 27a) The Court of Appeals so found despite the fact that the District Court, in an Opinion and Order on June 26, 1986, had disavowed any intention to try the Philippines' basic allegations of wrongdoing by President Marcos and the District Court stated that "[i]f this Court were being asked to try allegations that over 20 years the former president of the Philippines abused his office and wrongfully took property of

the Philippine Republic, a claim of *forum non conveniens* would be highly persuasive." (Pet. App. at 11c)

Similarly rejected was Glockhurst's claim that the courts of this country should not become a forum for battles between foreign governments and their predecessors whom they have ousted from power. Citing a submission by the Department of Justice, and concurred in by the Department of State, the Court below found that the United States does not fear embarrassment if the courts take jurisdiction of this dispute. (Pet. App. at 27a-28a) Based on this finding, the Court found no reason to abstain from the exercise of jurisdiction.

REASONS FOR GRANTING THE WRIT

The decision below involves important questions of Federal law which have not been, but should be, decided by this Court. Acts of a foreign sovereign, alleged by the Philippines to have been performed entirely its own country by the former president in the purported exercise of his presidential powers, were held to be excluded from application of the Act of State doctrine and subject to review under a "private act" exception to that doctrine. That decision has no support in the opinions of this Court and conflicts with decisions of the Ninth Circuit. It raises issues on which the courts below, Federal and State, are in hopeless confusion and which have a substantial effect on the proper role of the courts in this sensitive area.

By allowing a lawsuit by a foreign government against its predecessor, the decision below embroils the Federal court in a dispute it is ill-equipped to handle. An action challenging the legality of a foreign government leader's acts under his own country's law presents complex issues of foreign law and must necessarily involve an assessment of that country's governmental and political structure. With the Federal door open to suits of this type, actions against the leaders of ousted governments are all but certain to follow political upheavals. Whether or not the Fed-

eral courts can and should be available for determining such controversies is an issue of great practical significance and involves a delicate consideration of the proper role and the realistic limitations of the Federal courts.

POINT I

THERE IS AN IMPORTANT ISSUE AS TO THE SCOPE OF THE ACT OF STATE DOCTRINE

This Court Has Not Held That There Is A "Private Act" Exception

A recent commentator has noted "the widespread disagreement and confusion that exists in the Supreme Court (and lower federal courts) regarding the act of state doctrine." Bazyler, *Abolishing the Act of State Doctrine*, 134 U. Pa. L. Rev. 325, 341 (1986). That confusion is reflected in the opinion of the Court of Appeals, where the Court recognized that the Act of State doctrine applies even to acts which were illegal where performed (Pet. App. at 32a), and inconsistently stated that the ownership of the property at issue in this case will depend upon "the determination whether the Marcoses obtained their wealth illegally." (Pet. App. at 34a)[5]

The decision below rests upon what it called "the crucial distinction between acts of Marcos as head of state, which may be protected from judicial scrutiny *even if illegal under Philippine law*, and his purely private acts." (Pet. App. at 32a) (Emphasis added) This distinction finds no support in any of the cases in this Court, or indeed in prior cases of the Second

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5 There is a further inconsistency as to the action to be taken by the District Court on remand. Discussing the Act of State doctrine, the opinion states that the District Court could either reach a decision on the merits or defer to the Philippine courts. At the conclusion of the opinion, however, when discussing *forum non conveniens*, the Court foreclosed the supposed choice by asserting that: "This action is merely ancillary to an eventual Philippine decree or judgment and was brought in the Southern District only because the real estate is located here." (Pet. App. at 38a)

Circuit, cited by that Court. The fallacy of the decision is shown by its reliance on the opinion in *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682 (1976). (Pet. App. at 32a) The word "private" as used in that opinion is coupled with the word "commercial." Those words are used to describe the "purely commercial acts" that *Dunhill* excluded from operation of the Act of State doctrine. Justice White wrote for the plurality, 425 U.S. at 695:

> "Distinguishing between the public and governmental acts of sovereign states on the one hand and their *private and commercial* acts on the other is not a novel approach." (Emphasis added)

The crux of the *Dunhill* opinion appears in the statement that:

> "In their commercial capacities, foreign governments do not exercise powers peculiar to sovereigns. Instead, they exercise only those powers that can also be exercised by private citizens." 425 U.S. at 704.

No private citizen could have performed any of the wrongful acts with which Marcos is charged in the complaint. Not one of those acts could have been performed if Marcos did not have sovereign authority or if he had not been purporting to act in his official capacity: accepting "bribes . . . in exchange for the grant of government favors;" "outright expropriation of private property;" "arrangement of loans by the Philippine Government;" "direct raiding of the public treasury;" "diversion of loans . . . from other governments intended for use by the Philippine Government;" and "creating public monopolies placed in the hands of persons beholden to or fronting for Marcos." Moreover, all of these alleged acts were performed within the territory of the Philippine government and at times when that Government was a close ally of the United States.

There are many cases in which individuals were held to have exercised "powers peculiar to sovereigns," making the Act of State doctrine applicable even in the absence of formal decrees

or proclamations. *See, e.g., Underhill* v. *Hernandez*, 168 U.S. 250 (1897); *Oetjen* v. *Central Leather Co.*, 246 U.S. 297 (1918); *Clayco Petroleum Corp.* v. *Occidental Petroleum Corp.*, 712 F.2d 404 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040 (1984). Here it is noteworthy that the Philippine Constitution, which was adopted in 1973 and was in effect for most of Marcos' reign, contained a provision which immunized Marcos from suits based on his actions as president.

Neither *Dunhill* nor any other case in this Court supports the holding below that the Act of State doctrine permits the judicial scrutiny of Marcos' acts and motives that the District Court was directed to undertake, whether in a trial on the merits, or at a hearing on a provisional injunctive remedy pending trial in a Philippine court, or, as directed here, as part of a determination of the applicability of the Act of State doctrine itself.

The *Dunhill* case was decided by a bare majority of this Court, and only four Justices joined in the opinion. To the dissenters it sufficed that "retention and refusal to return funds" paid to Cuban agents were "acts of a foreign government performed within its own territory" and so constituted an Act of State, 425 U.S. at 715-16, and this made it unnecessary to consider the existence or scope of a " 'commercial act' exception," 425 U.S. at 724-30. Whether or not such a general exception of commercial transactions is ultimately adopted, there is no apparent justification for an exception for non-commercial "private acts," affecting only the country claimed to have been wronged by its own sovereign or agent.

Charges of corrupt acts are made against sovereigns in virtually every part of the world. The rule announced by the Second Circuit would lead to examination by the courts of the motivations and finances of individuals in high places anywhere and would inevitably involve our courts in the affairs of

foreign states in a manner that defeats the purpose of the Act of State doctrine.[6]

Conflict Among The Circuits

The "private act" exception recognized by the court below finds support in the Fifth Circuit (*Jimenez* v. *Aristeguieta*, 311 F.2d 547 (5th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963)), but is in direct conflict with cases in the Ninth Circuit. In *Occidental Petroleum Corp.* v. *Buttes Gas & Oil Co.*, 331 F. Supp. 92 (C.D. Cal. 1971), *aff'd*, 461 F.2d 1261 (9th Cir.), *cert. denied*, 409 U.S. 950 (1972), and more recently in *Clayco Petroleum Corp.* v. *Occidental Petroleum Corp.*, 712 F.2d 404 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040 (1984), that Court rejected the view that apparently official acts motivated by personal gain are not Acts of State.

In *Occidental Petroleum Corp.* the ruler of a sheikdom was alleged to have confiscated plaintiff's property and to have so acted for " 'his own personal gain and benefit,' " 331 F. Supp. at 113; the Court held that this was an Act of State which could not be questioned. So, too, in *Clayco*, the Ninth Circuit held that it could not question the evidently improper nature of a territorial concession granted by the petroleum minister of a foreign state in exchange for "secret payments" which were made to him. There was no question but that the minister abused his office for personal gain; the Ninth Circuit decided the case on the basis that "these $417,000 in payments plus

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6 For example, allegations almost identical to those made in this action against Marcos were recently made against President Suharto of Indonesia, who is also said to use his sovereign powers to manipulate an elaborate network of privilege for the personal benefit of him, his family and his cronies. *See* Jones and Pura, *All In The Family; Indonesia Decrees Help Suharto's Friends and Relatives Prosper; But Monopolistic Practices, Said To Stifle Industry, Sap The Nation's Economy*, Wall Street Journal, Nov. 24, 1986, p. 1, col. 1.

'entertainment' expenses constituted bribes to induce Sultan and his father to award the concession." 712 F.2d at 406.[7]

The procedure prescribed by the Court below for the litigation in the District Court points to another conflict in the decisions on this subject. In holding that Glockhurst and petitioners would have the burden of proving the very facts alleged in the complaint, the ruling is contrary to a number of decisions in the Second Circuit and other circuits which dismissed complaints on Act of State grounds solely on the allegations in the complaint. *E.g.*, *Clayco Petroleum Corp.* v. *Occidental Petroleum Corp.*, *supra*; *DeRoburt* v. *Gannett Co., Inc.*, 733 F.2d 701 (9th Cir. 1984), *cert. denied*, 469 U.S. 1159 (1985); *Hunt* v. *Mobil Oil Corp.*, 550 F.2d 68 (2d Cir.), *cert. denied*, 434 U.S. 984 (1977); *Bernstein* v. *Van Heyghen Freres S.A.*, 163 F.2d 246 (2d Cir.), *cert. denied*, 332 U.S. 772 (1947).

Application Of The Doctrine To Former Sovereigns

The Court below cited two considerations which, it said, "may limit the applicability of the [Act of State] doctrine even [as] to Marcos's public acts": that the Marcos government is no longer in power, and that the present Government is asking our courts to scrutinize its actions. (Pet. App. at 33a-34a) The presence of these two factors introduces a further issue of importance on which there is confusion in the courts below and which this Court should clarify.

In the *Sabbatino* case, as the Court below recognized (Pet. App. at 33a), this Court expressly left open the question of the effect of the change of government. It is a question of great importance, the significance of which is highlighted by the

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7 In *Sison* v. *Marcos*, Civ. No. 86-0225 (D. Hawaii July 18, 1986), the district court for Hawaii dismissed, on Act of State grounds, a complaint charging Marcos with torture and murder while acting as President. The Ninth Circuit, in *DeRoburt* v. *Gannett Co.*, 733 F.2d 701, 704 (9th Cir. 1984), *cert. denied*, 469 U.S. 1159 (1985), gave as an example of purely "personal life" activities, on which a suit by the sovereign would not be barred by the Act of State doctrine, a claim based on someone shooting his horse.

manner in which the Court below sought to distinguish two earlier cases in which it had held that the Act of State doctrine barred actions based upon the acts of former governments, *Banco de Espana* v. *Federal Reserve Bank*, 114 F.2d 438 (2d Cir. 1940) and *Bernstein* v. *Van Heyghen Freres, S.A.*, 163 F.2d 246 (2d Cir.), *cert. denied*, 332 U.S. 772 (1947); the Second Circuit said that in neither of them did the court "discuss the separation of powers issue, and both cases appear more strongly to rely on the earlier sovereign immunity rationale." (Pet. App. at 33a)

Maintenance of the separation of powers within our Government is indeed the foundation on which *Sabbatino* rested, but the express reservation of the issue in that case furnishes no controlling principle. On the contrary, the reference in *Sabbatino* to the *Bernstein* case emphasizes the need to have this Court define the relationship betweeen judicial and executive functions. It is highly significant that the so-called *Bernstein* exception, under which the courts would defer to the executive branch as to application of the doctrine, has never been accepted by a majority of this Court. *See First National City Bank* v. *Banco Nacional de Cuba*, 406 U.S. 759, 790-93 (1972) (Brennan, J., dissenting).

Furthermore, there is precedent for application of the Act of State doctrine when a new government is seeking assets allegedly purloined by officials of a prior government. In *Banco de Espana* v. *Federal Reserve Bank*, 114 F.2d 438 (2d Cir. 1940), the Act of State doctrine was held to bar a suit on behalf of the Franco government for the return of silver which had been sold by officials of the former Republic of Spain. The Court in that case cited and followed the holding of this Court in *Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 140 (1938), that acts of a foreign government do not become any less the recognized acts of the government when a new government comes into power. 114 F.2d at 444. In *DeRoburt* v. *Gannett Co.*, *supra*, 733 F.2d at 702, the fact that the plaintiff, like the Philippines here, was the then reigning sovereign did not exempt from the bar of the Act of State doctrine his complaint

which would have required determination whether plaintiff had made "secret and illegal loans."

The incursion into the Act of State doctrine by the Court below throws into confusion rather than clarifies the role of the judiciary in resolving claims based on official acts of foreign sovereigns. This important issue of federal law should be resolved by this Court.

POINT II

THIS CASE PRESENTS AN IMPORTANT ISSUE AS TO THE JUSTICIABILITY OF DISPUTES IN WHICH A FOREIGN SOVEREIGN CHALLENGES ACTIONS ALLEGEDLY TAKEN BY A FORMER PRESIDENT DURING HIS TENURE

The "lack of judicially discoverable and manageable standards" for resolving a controversy compels dismissal of an action. *Baker v. Carr*, 369 U.S. 186, 217 (1962). A United States court is without judicially manageable standards to determine whether Mr. Marcos' actions in fact violated foreign law—a necessary determination in this case. Plaintiff has alleged that Mr. Marcos violated Philippine law by receiving certain "bribes" and "kickbacks." American courts have a difficult enough time, under domestic law, distinguishing bribes from gratuities from valid personal gifts to public officials. *Compare* 18 U.S.C. § 201(c) (receipt of bribe unlawful) *with* *id.* § 201(g) (receipt of gratuity unlawful) *with United States* v. *Arthur*, 544 F.2d 730, 734-35 (4th Cir. 1976) (receipt of good will gift lawful). The legal issues surrounding Mr. Marcos' acts under Philippines law would be even more difficult for an American court.

Mr. Marcos was president pursuant to a declaration of martial law, and the Philippine Constitution provided him with immunity for all acts taken while he was president. These facts take this action beyond the point of manage-

ability by the Federal courts. A proper assessment of the significance of these factors requires more than an expertise in Philippine civil tort law; it necessitates a consideration of the Philippine governmental structure as well as political practices and customs. A Federal court would be on wholly unfamiliar ground. The familiar and manageable standards that enable fair judicial determination of disputes are absent here.

The Federal courts are not equipped to determine the legality of a foreign government leader's acts under his own country's law. The propriety of injecting Federal courts into this thicket is an important issue whose resolution depends on a delicate assessment of the proper role as well as the limitations of the Federal judiciary. It is an issue likely to be presented with increasing frequency as political instability continues to grow in many parts of the world, and it is an issue of international consequence. It should be addressed by this Court.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should be issued to review the judgment and opinion of the Court of Appeals for the Second Circuit.

Dated: March 16, 1987

Respectfully Submitted,

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